The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2022

Appeal Ref: APP/N5090/C/21/3274504
1 Kings Close, London NW4 2JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Michael Shelton of S and R Investments Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 26 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the outbuilding to the rear to use as an office.
- The requirements of the notice are
  1. Cease the use of the outbuilding as a commercial office.
  2. Permanently remove bathroom/s from the outbuilding.
  3. Permanently remove from the site all constituent material resulting from the necessary works carried out in point 2.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is varied by the deletion of the word "commercial" in paragraph 5.1 of the notice. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (a) appeal and the deemed planning application

Main Issues

2. The main issues are the effect of the development on i) the character and appearance of the area; and ii) the living conditions of the occupiers of neighbouring properties and the host building having regard to noise, disturbance and privacy.

Reasons

Character and appearance

3. The appeal site lies within a quiet residential area laid out as two storey terraced and semi-detached dwellings and purpose-built flat developments. Mature gardens are a feature of the area. There are also street trees and near to the appeal site there is a large park centred on Dollis Brook, which flows north-south through the neighbourhood, in part parallel to the rear of Kings

Close. Although there is significant on-street parking in the area, the verdant features and the design of the built form result in an attractive residential area.

4. The appeal site comprises an end of terrace house with front and rear gardens. It flanks a vehicular access way that leads to the rear of the houses. Some residents have erected small garages and sheds at the rear of their gardens which benefit from the rear access way. At the rear of the appeal site there is a large outbuilding laid out as three rooms and a bathroom that occupies approximately two thirds of the garden. There are two windows within the side elevation adjacent to No 3 Kings Close and one window and a door overlooking the host property. Access to the outbuilding is from the access way via a gate (with a key code) within the side boundary fencing.

5. The host property appears to be in use as five flats[1]. The appellant submits that the outbuilding is only used as an office by the tenants of the flats. This use began when Covid-19 regulations required people to work from home and at the site visit I saw five desks spread across the three rooms in the outbuilding. The appellant points out that the Council refer to the use as a commercial office in the reasons for issuing the notice but he submits that if it is only the tenants using the outbuilding as their home office, then that is not the case. I find that this is not a ground (b)[2] argument; it is more that the appellant is seeking to demonstrate that the nature of the use has less of an effect on the character and appearance of the area.

6. I find that the allegation in the notice is use as an office. In my view, if the tenants are working from home, then they are carrying out economic activity to earn a living in the form of sitting at a desk and that amounts to an office use. It is a question of scale.

7. Generally, the incidental use of a small detached outbuilding at the rear of the garden as a home office or hobby room by one household has a limited effect on the character and appearance of an area. Access is usually from the single dwelling house, across the garden and into the building and occupation is usually by one individual in one room. The largely residential character and appearance of an area remains unchanged as the use is ancillary to the overall use of the property as a single dwelling house and, as such, the use goes unnoticed.

8. In this case there are five separate households making use of three rooms within a substantial outbuilding. Access is not from the house and across the garden due to the internal layout of the property and so tenants must exit the house via the front door and enter the garden via the 'key code' gate. The scale of this activity, with five individuals coming and going according to their own separate timetables, has changed the character and appearance of this quiet residential area. In my view, the current office use cannot be said to be an ancillary use within one planning unit and the degree of change results in harm. This has not gone unnoticed as, for example, neighbours describe individuals working in the outbuilding often standing in the street and access way making business calls for all to hear.

9. The appellant suggests that limiting the office use to the tenants of the host property would overcome the reasons for issuing the notice. However, this

[1] Appellant's response to the Council's Planning Contravention Notice made 1 February 2021
[2] Appeal on ground (b), that those matters alleged have not occurred.

would not accord with the Council's development plan, which directs the development of new offices to town centres as part of its economic strategy.

10. For these reasons I find the development causes harm to the character and appearance of the area. As such, the development does not accord with Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document September 2012 (CS) and Policies DM01 and DM02 of Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012 (DMP). These require, amongst other matters, that new development should be based on an understanding of local characteristics and should protect and enhance the gardens of residential properties.

Living conditions

11. I have already referred to the evidence of third parties that the use causes noise and disturbance in the street when considering the effect of the development on the character of the area. At the site visit I saw that the rear gardens are not large at this point and that the outbuilding has two windows that partially overlook the garden of No 3 Kings Close and one that overlooks the garden of the host property. The Council's Supplementary Planning Document: Residential Design Guidance 2016 (SPD) recognises that one of the characteristics of garden areas is their tranquillity.

12. I find, having regard to the size of the gardens and the position of the windows in the outbuilding, that the comings and goings of office workers would not go unnoticed by the occupiers of No 3 when using their garden. Furthermore, the use of the outbuilding by so many people, in terms of conversations and interactions, not just in person but potentially also in video calls and online events, would disturb users of the garden at No 3 to an unacceptable degree. The appellant refers to "commercial machines" being absent from the outbuilding but I find disturbance can arise in many forms.

13. With regard to the privacy of the existing tenants, the allegation is the use of the outbuilding as an office and it may not always be the case that the existing tenants use the building. In those circumstances the comings and goings of office users unrelated to the host building and the outlook from the outbuilding across the garden would result in a loss of any privacy for users of the remaining small garden area.

14. The appellant submits that the outbuilding could be "fully fenced off from the main house" in order to maintain a private garden area. No scheme has been submitted to demonstrate how this would be done but I find that, in all likelihood, this would reduce the size of the remaining garden area even more. It also appears to be an acknowledgement by the appellant that the office could be used by people other than the tenants.

15. For these reasons I find the development causes harm to the living conditions of the occupiers of neighbouring properties and the host building, having regard to noise, disturbance and privacy. This does not accord with Policy CS5 of the CS and Policies DM01, DM02 and DM04 of the DMP. These require, amongst other matters, that development proposals should be designed to allow for adequate privacy and proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted.

Summary conclusion

16. For all these reasons the appeal on ground (a) fails.

The ground (f) appeal

17. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires that the use should cease and that the bathroom facilities should be removed from the building. I therefore consider that the purpose of the notice is to remedy the breach of planning control.

18. In appealing on ground (f) the onus is on the appellant to specify lesser steps which in his view would overcome the objections to the development. The appellant submits that it is excessive to require the removal of all bathroom facilities on the basis that a bathroom existed when the outbuilding was used as a gym for the occupiers of the flats.

19. It is for the appellant to demonstrate, on the balance of probabilities, that the bathroom facilities were installed at a time and for purposes other than to enable the material change of use to take place. The appellant has provided no substantiated evidence of when the bathroom facilities were installed and how the building was being used at the time of their installation. In determining the appeal it is not for the Inspector to request this information.

20. The Council set out the planning history of the site in their Statement of Case, which the appellant has not disagreed with. This includes reference to the issue of an enforcement notice (which was complied with), following a complaint made in 2011, for the construction of an outbuilding in the rear garden and its use as three flats. Reference is also made to the grant of a lawful development certificate (LDC) for the proposed erection of a rear outbuilding. An informative attached to the decision notice states, "This certificate and permitted development rights do not apply in the case of converted properties or flats accommodation."

21. The planning history of the use of the dwelling house on site is not known and it would appear from the informative attached to the LDC that Council officers may not have ascertained that the use of the dwelling house was as a dwelling house when determining the LDC application. From my reading of events, it seems that the outbuilding was fitted with bathroom facilities when it was used as three flats. These may have remained after the residential use ended, whether that was in compliance with the enforcement notice is not known. However, on the balance of probabilities, it has not been demonstrated that a subsequent gym use was lawful if the dwelling was in use as flats.

22. On the basis of the limited evidence before me from the appellant, it is considered that the bathroom amenities facilitate the material change of use and as such are integral to, and solely for, the purposes of facilitating that use. It is therefore appropriate and not excessive that the requirements include the removal of all works integral to, and solely for, the purpose of facilitating the material change of use.

23. It is necessary to vary the wording of the requirements by deleting the word "commercial" prior to the word "office" to accord with the description of

development set out in the allegation. There would be no injustice caused to either party by this variation as the word "office" correctly describes the use.

24. In the absence of cogent evidence to the contrary, it is concluded that the requirements of the notice are not excessive and the appeal on ground (f) fails.

The ground (g) appeal

25. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to carry out the work or actions specified in the steps.

26. The appellant submits that two months is not a reasonable period to comply with the requirements of the notice and that this should be increased to nine months. He refers to a six month notice period for the tenants; and the possibility that he may need to instigate eviction proceedings but provides no evidence that this would be necessary.

27. It is not clear why, if the outbuilding is used by the existing tenants, that they require six months notice to cease their office use of the outbuilding. The notice does not require that they cease the residential use of their flats. When the appeal was made, the Government had extended notice periods for residential tenants to six months in the light of the pandemic but this has no bearing on the office use. In addition, if the office is used by others, then the appellant has not submitted any details of contracts or leases to demonstrate particular notice periods.

28. An extension of time has not been justified in any detail and it is therefore considered that two months is a reasonable period to cease the use and carry out the physical works. The appeal on ground (g) therefore fails.

Conclusion

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D Fleming

INSPECTOR